

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

**United States Courts
Southern District of Texas
FILED**

APR 08 2005

Michael N. Milby, Clerk of Court

CRYSTAL GAIL MARTINEZ,

Plaintiff,

v.

**HSS SYSTEMS, L.L.C., AND
CHCA CLEAR LAKE, L.P.,**

Defendants.

CASE NO. G-05-

JURY

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HON. SAMUEL B. KENT, UNITED STATES DISTRICT JUDGE:

Plaintiff, Crystal Gail Martinez, files this complaint, complaining of Defendants, HSS Systems, L.L.C., and CHCA Clear Lake, L.P., and would show the Court the following:

PARTIES

1. Plaintiff, Crystal Gail Martinez, is an individual that is a citizen of the State of Texas.
 2. Defendant, HSS Systems, L.L.C. ("HSS"), is a limited liability company organized under the laws of the State of Tennessee. Defendant HSS has its principal place of business in the State of Tennessee. Defendant HSS may be served with process by serving its registered agent, CT Corporation Systems, whose address is 350 North St. Paul Street, Dallas, Texas 75201.
 3. Defendant, CHCA Clear Lake, L.P. ("CHCA"), is limited partnership organized under the laws of the State of Delaware. Defendant CHCA has its principal place of business in

the State of Texas. Defendant CHCA may be served with process by serving its registered agent, CT Corporation System, whose address is 350 North St. Paul Street, Dallas, Texas 75201.

JURISDICTION

4. This Court has jurisdiction over the Plaintiff's claims against Defendant HSS because they arise under the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et seq.* The Plaintiff was employed as registrar with Defendant HSS, a limited liability company doing business within the territorial jurisdiction of this Court. This Court has supplemental jurisdiction under 28 U.S.C. § 1337 over the Plaintiff's claims against Defendant CHCA because these claims are so related to the claims within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

CONDITIONS PRECEDENT

5. All conditions precedent have been performed or have occurred.

COUNT I – VIOLATION OF THE FMLA BY DEFENDANT HSS

6. The Plaintiff is an eligible employee within the meaning of the FMLA. The Plaintiff was employed by Defendant HSS for at least 12 months and for at least 1,250 hours of service during the previous 12-month period.

7. Defendant HSS is an employer within the meaning of the FMLA. Defendant HSS is engaged in commerce or in an industry or activity affecting commerce and employs 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year.

8. The Plaintiff was entitled to 12 work weeks of leave during the period of the calendar year 2004 because of the Plaintiff's severe chronic pelvic pain, a serious health condition that made the Plaintiff unable to perform the functions of her position.

9. The Plaintiff gave Defendant HSS such notice as was practicable under the foreseeable circumstances before the date her leave was to begin.

10. Defendant HSS intentionally denied the exercise of the Plaintiff's rights provided under the FMLA by refusing to grant the Plaintiff leave and instead discharging her prior to her scheduled leave was set to begin.

11. As a direct and proximate result of Defendant HSS's conduct, the Plaintiff suffered the following injuries and damages: (a) the Plaintiff was discharged from employment with Defendant HSS, resulting lost pay and benefits; (b) the Plaintiff is entitled to reimbursement for the actual monetary losses she suffered directly resulting from Defendant HSS's violation of the FMLA; (c) the Plaintiff is entitled to postjudgment interest on all sums, including attorney fees and costs; and (d) because Defendant HSS's conduct was intentional and willful, the Plaintiff is entitled to an award of liquidated damages within the meaning of the FMLA.

12. The Plaintiff was forced to engage counsel to protect her rights. The Plaintiff is entitled to an award of attorney fees and costs under the FMLA, 29 U.S.C. § 2617(a)(3).

**COUNT II –VIOLATION OF THE PLAINTIFF'S PRIVACY RIGHTS
BY DEFENDANT CHCA**

13. At all material times, Defendant CHCA was a covered entity as defined by the "Privacy Rule", *see 45 C.F.R. § 164.508(a)(1)* (2004). During a period that ended approximately one month prior to the commencement of this action, the Plaintiff had sought and obtained professional medical services through Defendant CHCA. During the course of her transactions with Defendant CHCA, the Plaintiff was encouraged to reveal and did reveal personal facts concerning her medical condition and history, based on her belief that Defendant CHCA would keep her private medical records confidential as required by the Privacy Rule and by applicable state law.

14. On or about November 10, 2004, in violation of the Plaintiff's right to medical records privacy, Defendant CHCA willfully and without the Plaintiff's knowledge or consent published confidential information regarding the Plaintiff's medical condition to her former employer, Defendant HSS.

15. The Plaintiff further alleges that Defendant CHCA disclosed confidential communications and records of the identity, diagnosis, evaluation, and treatment of the Plaintiff in violation of Section 181.001 *et seq.* of the Texas Health and Safety Code.

16. The Plaintiff has suffered actual losses and actual damages as a direct and proximate result of Defendant CHCA's cruel and wrongful invasion of her medical records privacy as described above in a sum of at least \$10,000.00, and for which the Plaintiff sues.

17. Defendant CHCA's conduct constituted a grossly negligent violation of the Plaintiff's right to medical records privacy. The Plaintiff, therefore, is entitled to recover exemplary damages from Defendant CHCA. Accordingly, the Plaintiff sues for exemplary damages in a sum of at least twice the amount of the Plaintiff's actual damages.

JURY DEMAND

18. Plaintiff, Crystal G. Martinez, asserts her rights under the Seventh Amendment to the United States Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

PRAYER

19. For these reasons, the Plaintiff asks for judgment against the Defendants for the following: (a) lost pay and benefits; (b) actual damages; (c) exemplary damages; (d) prejudgment interest; (e) postjudgment interest; (f) attorney fees and costs; and (g) all other relief the Court deems appropriate.

Respectfully submitted,

By: Mark Aronowitz
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OF COUNSEL
ARONOWITZ & TREFETHERN

ATTORNEY IN CHARGE FOR
PLAINTIFF, CRYSTAL GAIL MARTINEZ

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CRYSTAL GAIL MARTINEZ

(b) County of Residence of First Listed Plaintiff GALVESTON
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

MARK ARUNOWITZ & TREVETHAN
ARUNOWITZ & TREVETHAN
602 LK ST N, Texas City TX 77590**DEFENDANTS**HSS SYSTEMS, L.L.C. AND
EHCA CLEAR LANE, L.P.County of Residence of First Listed Defendant HARRIS
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

United States Courts
Southern District of Texas**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- | | |
|------------------------------------------------------|---------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
(For Diversity Cases Only) and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|-------------------------------------------|--------------------------------|--------------------------------------------------------------|--------------------------------|-------------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> PTF 1 | <input type="checkbox"/> DEF 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> PTF 4 | <input checked="" type="checkbox"/> DEF 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated or Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

PERSONAL INJURY	PERSONAL PROPERTY	LAW	SOCIAL SECURITY	GENERAL CIVIL SUITS
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 365 Property Damage	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes	
<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habemus Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)		
<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 871 IRS—Third Party		
<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	26 USC 7609		
<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other			
<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights			
<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

The Plaintiff is filing claims under FMLA, 29 U.S.C. § 2601 et seq.

Brief description of cause:

Defendant HSS failed to provide the Plaintiff w/ requested FMLA leave

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

April 7, 2005
FOR OFFICE USE ONLYMark Arunowitz
MARK ARUNOWITZ

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE